



Joint Legislative Audit and Review Commission 2000 Fiscal Impact Review

Bill Number: SB153 as Substituted
Review Requested By: Senator Chichester
Chairman of: Senate Finance

Concur

JLARC Staff concur with the fiscal impact statement referred for review

Concur with Reservations

With the reservations noted below, JLARC staff concur with the fiscal impact statement referred for review

X Non-Concur

As noted below, JLARC staff do not concur with the fiscal impact statement referred for review.

Bill Summary

Sub. for SB153 incorporates provisions from eight introduced bills (SB108, SB109, SB118, SB120, SB153, SB154, SB155, and SB600). The Substitute bill establishes mandatory minimum penalties for several drug possession and distribution crimes, and supplements current provisions for screening, assessment, treatment and supervision of substance abusing offenders (adults and juveniles).

Fiscal Implications

JLARC staff does not concur with the fiscal impact statements prepared by the Department of Planning and Budget (DPB) on the component bills of Sub. for SB 153. JLARC staff concurs, with reservations, with the Criminal Sentencing Commission (CSC) impact analysis of long-term bedspace needs.

CSC projects a prison bedspace need of 5 in FY 2001 and 90 in FY 2002, and a peak of 816 in FY2010. While JLARC believes these numbers may be somewhat higher than will actually occur, the Budget Bill provides sufficient resources to accommodate the expected increase in the upcoming biennium. No additional operating funds are required for the Department of Corrections (DOC) or the Department of Juvenile Justice (DJJ) during the 2000-2002 biennium.

CSC indicates that the peak bedspace impact over the ten-year period from FY 2001 through FY 2010 would be 816 State-responsible (prison) beds in FY 2010. DPB's assessment of the bills amended into Sub. for SB 153 is that the peak bedspace impact would be 184 inmates over the same period. (DPB's analysis does not indicate in which year the peak would occur.) Using \$21,300 as the cost of housing an inmate for one year, the peak one-year fiscal impact of this Substitute bill would be \$17,280,800 in FY 2010 under the CSC estimate, and \$1,810,500 according to the DPB estimate. The Budget Bill (SB 30) provides \$1,810,500 to cover the costs of implementing these provisions, an amount sufficient for the upcoming biennium.

JLARC staff concurs with the DPB assessment of fiscal effects due to the substance abuse screening, assessment, treatment and education portions of Sub. for SB 153. CSC does not estimate the fiscal effects of the substance abuse screening, assessment, treatment, and education portions of the bill.

Sub. for SB 153 contains several amendments which will have fiscal effects. The fiscal effects estimated by CSC and DPB are discussed below. Some fiscal effects of changes made by the bill can not be estimated.

TOUGHER CRIMINAL PENALTIES FOR DRUG-RELATED OFFENSES

Sub. for SB 153 changes the current penalties for several drug-related offenses. Several of the changes create new mandatory minimum sentences.

DPB based its assessment of the total bedspace impact of Sub. for SB 153 on fiscal notes prepared by the Department of Corrections (DOC) on the eight bills amended into Sub. for SB 153. DOC generated ten-year projections using a simulation technique and data from the Pre- and Post- Sentencing Investigation (PSI) database for cases sentenced in calendar year 1998. Based on the DOC simulations, DPB projected a ten-year peak impact of 184 inmates for all the bills amended into Sub. for SB 153, as shown below:

- 99 additional prison inmates due to lowering the criteria for classification as a drug kingpin, and setting mandatory minimum sentences for convictions under the revised kingpin criteria (SB 153),
- 41 additional prison inmates due to a second or subsequent conviction of illegal drug distribution (SB 109),
- 25 additional prison inmates due to convictions for transporting an ounce or more of Schedule I or II drugs, or 5 pounds or more of marijuana, into Virginia (SB 154),
- 12 additional prison inmates due to convictions for selling drugs on or near school grounds (SB 108), and
- 7 additional prison inmates due to removing the 3-year junior requirement for convictions of distributing drugs to minors (SB 118).

DPB expects no additional prison inmates as a result of the other two bills (SB 155 and SB 600, both relating to substance abuse screening, etc.) amended into Sub. for SB 153. DPB multiplied the \$21,300 annual cost of incarceration by the 184 additional prison inmates projected under Sub. for SB 153, to derive an annual cost (in an unspecified out-year, beyond the 2000-2002 biennium) of \$3,919,200. DPB's fiscal impact statements indicate that \$1,810,500 has been included in Item 454 of the Budget Bill for the effect of these changes to statute.

JLARC REVIEW. JLARC staff does not concur with DPB's estimate of the long-term bedspace impact of Sub. for SB 153 due to an omission in the methodology used by DPB and DOC. This omission relates to their method for calculating the impact of the 3-year mandatory minimum for second and subsequent convictions for sale of Schedule I or II drugs (Sec. 18.2-248C, derived from SB 109). This flaw creates two problems that when considered together, artificially reduces the estimate of bedspace requirements under the bill.

First, the DPB-DOC estimate of the annual number of persons who would be subject to this provision (72) only includes those persons who received a second conviction under Sec. 18.2-248 for sale of Schedule I or II drugs in the Commonwealth. This ignores those individuals who had prior drug convictions but were not sentenced under the enhanced penalty structure of Sec. 18.2-248. When this group is accounted for, data from CSC reveals that the number of persons in the PSI database for FY98 who would have been eligible for conviction under the mandatory provision of the new statute was 314. These individuals were included in the CSC analysis, but not in the DPB-DOC analysis.

Second, using data on the 72 cases, DPB-DOC found that 30 persons received a sentence that was less than the three years that would be received under the proposed mandatory minimum provisions of the proposed Sec. 18.2-248C. Again, however, when second-time offenders who were not charged under the enhanced penalty provisions of the current law are considered, CSC indicates that the number of persons in the PSI database for FY98 who would have been eligible for the mandatory minimum who received less than a three year sentence was 181.

Using DPB's and CSC's application rate assumption of 100% -- the rate at which prosecutors would impose the mandatory minimum for eligible cases -- the number of persons that would have been incarcerated in FY98 had this provision been law, is 181. This contrasts with the DPB-DOC estimate of a maximum of 41 offenders receiving a three-year minimum mandatory sentence over the next decade under this feature of the bill.

Based on a brief review, JLARC staff found the model used by CSC to estimate the impact of this new bill on prison bedspace to be fundamentally sound. JLARC staff therefore concur with CSC's estimate of the fiscal impact, with a reservation about the CSC assumption that mandatory minimum sentences provided by the legislation will be sought and imposed in 100% of the applicable cases. CSC staff indicate that a number of Commonwealth's Attorneys have indicated their support for the mandatory minimum sentences for drug offenses, such as those contained in Sub. for SB 153. Based on this and other factors, CSC staff conclude that the minimum mandatory sentences contained in this bill will be used in 100% of the time. (It should be noted that the DPB-DOC review also assumed that the mandatory minimum sentences would be given in 100% of the cases they identified.)

In the case of other mandatory minimum sentences enacted in recent years, the application rate has been less than 100%. For example, CSC staff have noted that the mandatory minimum sentencing provision for use of a firearm in the commission of another major felony (Sec. 18.2-53.1) is applied in about 75% of possible cases. Although that experience may not be relevant to drug offenses, using a 75% application rate as a possible rate for the mandatory minimum sentences contained in Sub. for SB 153 would reduce the bedspace impact from 90 in FY2002 to 68, and from 816 to 612 in FY2010.

The high number of second and subsequent drug convictions during fiscal years 1997 and 1998 (886, according to CSC) suggests that even with an application rate less than 100%, the number of offenders who will receive mandatory minimum sentences will be higher than the levels suggested by DPB. Additionally, there are several offenses contained in the bill which DPB as well as CSC agree may require additional bedspace although neither is able to quantify the impact. Taken together, these factors reinforce a higher impact instead of a lower impact for the bill.

Neither CSC nor DPB comment on the potential effect of Sub. for SB 153 on the six "Drug Court" programs currently in operation. Nor does either reviewing agency comment on what effect if any the tougher penalties would have on State and local detention and diversion programs, which have been heavily used for drug offenders. To the extent that offenders like those currently in these programs receive mandatory periods of incarceration under Sub. for SB 153, expenditures for these programs may be reduced.

SUBSTANCE ABUSE SCREENING, ASSESSMENT, TREATMENT, AND EDUCATION

JLARC concurs with the DPB assessment of fiscal effects due to the substance abuse screening, assessment, treatment and education portions of Sub. for SB 153. The Budget Bill (SB 30) provides nearly \$20 million to handle the additional workload which will be generated under Sub. for SB 153.

New language (derived from SB 155 and SB 600) requires alcohol and substance abuse screenings and assessments for juveniles found delinquent of a first-time drug offense and for adults found guilty of a first-time drug offense. Sub. for SB 153 requires that the court order individuals to undergo substance abuse treatment and education programs such as the court deems appropriate on the basis of the screenings and assessments. The bill also amends Code Sec. 18.2-252 to require that a suspended sentence for any offense relating to drugs or other substances must be conditioned on periodic drug screening, assessment, testing and drug treatment/education. Additionally, for any felony committed on or after July 1, 2000, where the screening and assessment indicates a substance abuse problem, Sub. for SB 153 requires the court to add to a sentence of incarceration an additional term of 6 months to 3 years suspended based upon successful completion of post-release supervision.

The Budget Bill (SB 30) provides \$19,985,166 GF for three agencies to implement the screening, assessment, treatment, and education provisions of Sub. for SB 153. This includes, in DOC, \$2,888,500 for residential treatment, \$7,500,000 for outpatient treatment, and \$916,666 for drug relapse prevention; in DJJ, \$4,680,000 for drug treatment services; and \$4,000,000 for local substance abuse treatment programs funded through the Department of Criminal Justice Services. DJJ has indicated that additional resources may be needed for residential drug treatment under provisions now included in the Substitute bill; however, the agency is unable to accurately estimate the cost.

The requirement in Sections 18.2-10 and 19.2-295.2 for adding, to felons who have a substance abuse problem as documented through screening and assessment, a term of incarceration suspended based upon successful completion of post-release supervision may have a fiscal effect since Sub. for SB 153 removes the court's current discretion in imposing this sentence. The Criminal Sentencing Commission (CSC) indicates that judges have rarely invoked this option since it became available in 1995. CSC also notes that 85% to 87% of convicted felons in the FY 1997-98 PSI database were reported by their probation officer as having an apparent substance abuse problem (it should be noted that the probation officers' observations were not all based on screening and testing methodologies).

It thus appears likely that a higher rate of imposing a suspended sentence on this large number of felons will lead to an increased need for supervision, and to an increased number of persons failing to comply with the terms of suspension and thus being returned either to prison or jail. However, neither CSC nor DPB are able to estimate this impact.

Budget Amendment Necessary

No.

Agencies Affected

Corrections - Department of; Criminal Justice Services - Department of; Juvenile Justice - Department of

Date Released, Prepared By: 02/07/2000; Walter Smiley

JLARC Staff offer the above Fiscal Impact Review in Accordance with Item 16K of Chapter 935 (1999 Acts of Assembly). JLARC Fiscal Impact Reviews do not comment on the merits of the bill under review.